

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5442 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

VADHUMAL T BANSOLI

Versus

STATE OF GUJARAT

Appearance:

Shri R.N. Shah, Advocate, for the Petitioner

Shri A.G. Uraizee, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 20/09/96

ORAL JUDGEMENT

Heartless approach on the part of the bureaucracy is very well reflected in this matter. It appears that the bureaucrats involved in this petition believe that law is designed to harass people and not to help them contrary to the concept of the welfare state which has been devised by the Constitution of India implying

thereby that law is designed to help people and not to harass them. The result of the heartless approach on the part of the concerned bureaucracy is untold miseries to the present petitioner.

2. The background of the case may be summarised thus. The petitioner applied for grant of land for his salt grinding business way back on 19th February 1976. It appears that it did not evoke favourable response and it came to be rejected some time in April 1976 as stated by learned Assistant Government Pleader Shri Uraizee on instructions from the concerned official from the office of the Administrator of Sardarnagar Township at Ahmedabad (respondent No. 3) stated to be present in this court with the record of the case. It appears that the petitioner thereafter again applied for grant of land for his business purpose some time on 25th November 1983. His application was for grant of land bearing Plot No. 2342. It appears that the land applied for by the petitioner was not available or could not be granted to the petitioner. By one letter of 19th September 1994 written on behalf of the State Government (respondent No.1 herein), it was sought to be ascertained from the petitioner whether he was prepared to accept land from survey No. 2404. It appears that thereafter the petitioner had filed one civil suit in the Civil Court at Narol for grant of land from Plot No. 2342. It appears that the petitioner's application for grant of land was rejected. Thereafter it appears that the matter was reconsidered and by one communication of 29th June 1987 emanating from the office of respondent No. 3 the petitioner was informed that it was decided to grant a parcel of land admeasuring 100 square meters from survey No. 2404 for his salt grinding business at the prevalent market rate without auction. Its copy is at Annexure E to this petition. He was required to withdraw the suit pending in the Civil Court at Narol. It appears that he thereupon withdrew the suit on 7th July 1987. It appears that no further progress was made in the matter and the heartless bureaucrats sat tight over the whole issue. I am informed by learned Assistant Government Pleader Shri Uraizee on instructions that, pursuant to the decision reflected in the communication at Annexure E to this petition, the matter was referred to the Deputy Town Planner for fixing the price of the land in question. For some inexplicable mysterious and unknown reasons, no price of the land in question came to be fixed till 1992. In the meantime, the petitioner issued a reminder on 6th August 1981 in that regard. Its copy is at Annexure G to this petition. Thereafter the petitioner received one communication of 28th May 1992 from the office of

respondent No.3 informing him that he is allotted a parcel of land admeasuring 100 square meters from City Survey No. 2404 at the price of Rs. 750 per square meter and he was required to deposit the price of the land allotted in the sum of Rs. 75000/- within 30 days from its receipt. Its copy is at Annexure H to this petition. It appears that the petitioner could not pay that price. Thereupon another communication of 26th September 1995 was issued from the office of respondent No. 3 calling upon the petitioner to pay up the price of the land in the sum of Rs. 75000/- together with interest thereon within 30 days from its receipt failing which the allotment of land in his favour would be treated as cancelled. It appears that in the meantime the petitioner had deposited Rs. 25000/- by one receipt a copy of which is at Annexure J to this petition. He also deposited Rs. 20000/- on 20th October 1995. A copy of its receipt is also at Annexure J to this petition. It appears that, since the petitioner did not deposit the entire price of Rs. 75000/-, the allotment of land in his favour is treated as cancelled. The petitioner thereafter made one representation on 27th June 1996 to respondent No. 3 for reducing the price of the land pointing out therein that others were allotted land at a much lower price. Its copy is at Annexure K to this petition. It evoked no response from Respondent No. 3. The petitioner has thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for allotment of the land at a reasonable market price as prevalent in 1975-76 and in the alternative in 1984 and to adjust that price against the amount deposited by the receipts at Annexure J to this petition and to hand over possession of the land allotted to him.

3. I agree with learned Assistant Government Pleader Shri Uraizee for the respondents that ordinarily the price of the land has to be fixed at the time of its allotment. That ordinary rule will however not be applicable in the present case. The reason therefor is quite simple. As pointed out hereinabove, the petitioner was informed by the communication of 29th June 1987 at Annexure E to this petition that it was decided to grant land to him at the prevalent market price without auction. It appears that the concerned bureaucrats have remained lethargic in fixing the price of the land or in getting the price of the land fixed. Lethargy on their part should not result in demanding more price for the land from the petitioner. In fact, on account of passage of time the prices of land have gone upward and if the State Government wants it to be compensated for the

inflated price, the concerned bureaucrats should be asked to pay the difference to the State Government and the petitioner should not be subjected to pay the higher price for no fault of his more particularly when the petitioner had admittedly withdrawn his suit soon after the communication at Annexure E to this petition.

4. In this connection a reference deserves to be made to the ruling of this Court in the case of Ashutosh Sarkari Karmachari Co-operative Housing Society Ltd. v. State of Gujarat and another reported in 1995(2) 36(2) G.L.R. 1419. The ruling of this Court has been affirmed by the Division Bench of this Court in Letters Patent Appeal No. 733 of 1994 decided on 29th December 1994 and is affirmed in further appeal by the Supreme Court in Special Leave Petition No. 4846 of 1995 decided on 3rd April 1995. In that case the petitioner applied for grant of land under sec. 23 of the Urban Land (Ceiling and Regulation) Act, 1976. There was delay in consideration of its application by the concerned beaucrats. In the meantime applications made by other societies were considered and lands were allotted at a price fixed at the rate of Rs. 450 per square metes. Later on the petitioner's application in that case was considered and land was allotted to it at a price of Rs. 800 per square meter. In the petition challenging that order before this Court, it has been held that delay in consideration of the application for grant of land could not have resulted in fixing the higher price of the land to be allotted to the petitioner.

5. By analogy, the aforesaid ruling will be applicable in the instant case. It cannot be distinguished on the ground that it is rendered in the context of the relevant provisions contained in the Urban Land (Ceiling and Regulation) Act, 1976. The principle enunciated therein has to be considered and applied. The principle enunciated therein is that inordinate delay in consideration of the application for grant of land without any fault of the applicant should not result in fixation of the higher price of the land to be allotted. In the present case it was decided to allot land to the petitioner as early as in 1987. Its price came to be fixed as late as in 1992. The petitioner need not be required to pay the higher price on account of inordinate delay in fixation of the prevalent market rate for the allotment of land for no fault of his.

6. In view of my aforesaid discussion, I am of the opinion that the market value of the land allotted to the petitioner pursuant to the communication at Annexure E to

this petition has to be fixed as prevalent in 1987. The fixation of the price by the communication of 28th May 1992 at Annexure H to this petition cannot be sustained in law. The respondents deserve to be directed to fix the market price of the land allotted to the petitioner by the communication at Annexure E to this petition as prevalent in 1987. The respondents also deserve to be directed to adjust the market price so fixed in the context of the total amount of Rs. 45000/deposited by the petitioner vide the receipts at Annexures J to this petition. The respondents deserve to be directed forthwith to hand over possession of the land decided to be allotted to the petitioner as reflected in the communication at Annexure E to this petition.

7. In the result, this petition is accepted. The respondents are directed to hand over to the petitioner as expeditiously as possible but latest by 31st October 1996 possession of the land decided to be allotted to the petitioner in terms of the communication of 29th June 1987 at Annexure E to this petition. The respondents are also directed to fix its market price as prevalent in 1987. The respondents are further directed to adjust the price so fixed in the context of the deposits made by the petitioner of the total amount of Rs. 45000/- vide the receipts at Annexure J to this petition. Rule is accordingly made absolute with no order as to costs.
